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Paper No.

THE BOC GROUP, INC.
575 MOUNTAIN AVENUE
MURRAY HILL, NJ 07974

COPY MAILED

In re Application of:	:	DECISION NOTING	SEP 02 2004
Russell and Winterfeldt	:	ABANDONMENT OF	
Application No. 10/601,687	:	APPLICATION AND	OFFICE OF PETITIONS
Filed: June 23, 2003	:	DISMISSING	
Title of Invention: METHOD AND	:	PETITION UNDER	
APPARATUS FOR SELF-CONFIGURING	:	37 CFR 1.47(a)	
SUPERVISORY CONTROL AND DATA	:		
ACQUISITION (SCADA) SYSTEM FOR	:		
DISTRIBUTED CONTROL	:		

This is in response to the Petition Under 37 CFR 1.47(b), which is properly treated under 37 CFR 1.47(a) to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

The petition is dismissed.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)"; should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor, AND BE ADDRESSED TO petitions Attorney Derek L. Woods. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on June 23, 2003, without an oath or declaration. The Office mailed a Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice"), on December 31, 2003, requiring *inter alia*, a properly signed oath or declaration. The Notice set a two month period for reply, and provided for extensions of time under 37 CFR 1.136(a). Applicant failed to file a timely reply to the Notice.

Accordingly, this application is ABANDONED.

A petition to revive the application must be filed before any further consideration of this application may be provided.

The petition under 37 CFR 1.47

In the interest of time, the following analysis of Applicant's petition is provided:

In response to the Notice, Applicant files the instant petition wherein Applicant avers that copies of the Declaration and Assignment were sent to the nonsigning inventor on three different occasions, without a response from the nonsigning inventor. The petition further avers that the nonsigning inventor stated, to "a human resources representative of the BOC Group, Inc." that he was not interested in signing any paperwork." *Petition* at p.2.

Applicable Law

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) set forth above.

As to item (1), where it is alleged that an applicant refuses to join an application, the applicant must establish that the nonsigning inventor was presented with the application for signature. The Manual of Patent Examining Procedure ("MPEP") states that

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the

nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

MPEP 409.03(d).

As to item (1), applicant failed to show or provide proof that the inventor refused to sign the declaration. Before an inventor can refuse to sign an oath or declaration, he must have been presented with a copy of the application papers (specification, claims and drawings). See MPEP 409.03(d).

It is also noted that Applicant asserts that the nonsigning inventor has made an express oral refusal to join in the application. As an alternative to presenting the nonsigning inventor with the application where the inventor has made an express oral refusal to join in the application, the MPEP provides that

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Proof that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.

MPEP 409.03(d).

Accordingly, Applicant must either present a copy of the application papers to the inventors before a refusal to join in the application may be alleged, or provide specific facts, by a person with firsthand knowledge, of the time and place of the refusal.

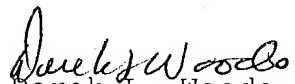
Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents
 PO Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: 2201 South Clark Place
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 Crystal Plaza Two, Lobby Room 1B03
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Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0014.


Derek L. Woods
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Office of Petitions